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EXAMINER	
BECKER, DREW E	

ART UNIT	PAPER NUMBER
1794	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/709,273	COHN, ROBERT	
	Examiner	Art Unit	
	Drew E. Becker	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 March 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 50-100* is/are pending in the application.

4a) Of the above claim(s) *1,51-56,67-74,77-93 and 98-100* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *50,57-66,75,76 and 94-97* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *1/18/08* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 1, 51-56, 67-74, 77-93, and 98-100 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group or species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/19/08.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 50, 57-66, 75-76, and 94-97, in particular claim 94, are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 14-15 of copending Application No. 11/830,957. It would have

been obvious to one of ordinary skill in the art that the polymer film of '957 would have "substantially instantaneously transfers heat" from the cooking oil due to its minimal thickness.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 50, 57-66, 75-76, and 94-97 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claims 50 and 94 recite "a material that substantially instantaneously transfers heat from the hot liquid cooking medium to product immediate effective frying temperature at the food item". It is not clear what types or thicknesses of materials would provide this effect. It is not clear what amount of time would be considered "substantially instantaneously". It is not clear what temperature would be considered an "effective frying temperature".

7. Claim 62 recites "tapered outward". It is not clear what shape is being claimed since these two terms appear to contradict one another.

8. Claim 64 recites "thin walled" aluminum and stainless steel. It is not clear what thickness would be considered "thin".

9. Claim 94 recites contacting “substantially all food item surfaces while maintaining a viable pouch open top". It is not clear how much of the food surface must contact the pouch since these limitations appear to contradict one another.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 50, 57-62, and 65 are rejected under 35 U.S.C. 102(b) as being anticipated by Roberts et al [Pat. No. 5,359,924].

Roberts et al teach a method for barrier submersion cooking by placing food in a containment area of a vessel such that the food contacts the interior surfaces (Figure 5, #16), the vessel having an open-top vent (Figure 5, #30), a rack for the vessel (Figure 5, #24), lowering the rack and vessel into cooking oil to cook the food while maintaining the vent above the surface of the oil (Figure 2, #28), removing the rack from oil and removing the food from the vessel prior to consumption (column 4, lines 15-19), preventing the oil from contacting the food during cooking by providing extended sidewalls (column 2, line 22), the vessel being made from a thin material which inherently “substantially instantaneously transfers heat” from the cooking oil, tapered sidewalls to ease food removal (column 2, line 30), the vessel having a generally circular cross-sectional shape to provide a “predetermined geometric shape” (Figure 4,

#30), a mounting flange (Figure 5, #34 & 36), and the food comprising a filler encased by dough (Figure 5).

12. Claims 50, 57, 60, 63, 66, 94-95, and 97 are rejected under 35 U.S.C. 102(b) as being anticipated by Janssen [Pat. No. 4,873,919].

Janssen teaches a method of barrier submersion cooking by placing food in a pouch (Figure 2, #22 & 86), an open-top vent above the surface of the frying oil to prevent oil from contacting the food (Figure 2, #26), a rack holding the pouch (Figure 2, #20), inherently removing the rack from the frying oil and removing the food from the pouch prior to consumption, the pouch being made from a thin material which inherently "substantially instantaneously transfers heat" from the cooking oil, the pouch having a rounded bottom (Figure 2, #100), the pouch being made form an oil impermeable film (column 9, line 18), folding the pouch seals (column 5, line 9), a vapor permeable top seal which effectively seals out oil while permitting vapor to pass (Figure 2, #26), and a tail of the pouch which can serve as both a vent and handle (Figure 2, #26).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

14. Claims 63-64 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts et al as applied above, in view of Robertson [Pat. No. 2,204,699].

Roberts et al teach the above mentioned concepts. Roberts et al do not recite a rounded bottom for the vessel, the vessel being formed from thin walled aluminum, and flutes. Robertson teaches a method for barrier submersion cooking by use of a vessel with a rounded bottom (Figure 3, #8), thin walled aluminum (page 1, column 2, line 16), and flutes (Figure 4, #16). It would have been obvious to one of ordinary skill in the art to incorporate the vessel features of Robertson into the invention of Roberts et al since both are directed to methods of barrier submersion cooking, since Roberts et al already taught varying the shape of the vessel (column 3, line 41-42) and simply did not mention what material was to be used for the vessel, since Robertson teaches that the flutes act to increase the radiating area of a surface (page 1, column 2, line 54) thus improving heat transfer, since thin walled aluminum was a commonly used material for cooking utensils as shown by Robertson, and since a rounded bottom would have provided a more appealing look to the product of Roberts et al.

15. Claim 76 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts et al as applied above, in view of Downers [Pat. No. 3,858,496].

Roberts et al teach the above mentioned concepts. Roberts et al do not recite the rack holding the stick during cooking. Downers teaches cooking device for holding sticks during cooking (Figure 1). It would have been obvious to one of ordinary skill in the art to incorporate the stick holder of Downers into the invention of Roberts et al since both are directed to methods of cooking food, since Roberts et al already included sticks in the vessels (Figure 5, #18) as well mounting the vessels to the rack (Figure 6, #42), since Downers teaches that the stick holder can be made in a rectangular shape

(column 2, line 44) thereby fitting on the rack of Roberts et al, and since the stick holder of Downers prevents the food article paced on the sticks from contacting the vessel sidewalls (column 2, line 5) thus ensuring the dough of Roberts et al fully encasing the sausage.

16. Claim 96 is rejected under 35 U.S.C. 103(a) as being unpatentable over Janssen as applied above, in view of Wilson [Pat. No. 3,658,562].

Janssen teaches the above mentioned concepts. Janssen does not recite aluminum. Wilson teaches a cooking bag made from aluminum (abstract; Figure 2). It would have been obvious to one of ordinary skill in the art to incorporate the aluminum of Wilson into the invention of Janssen since both are directed to methods of cooking food in bags, since Janssen already taught using suitable and available materials (column 9, line 15), and since thin walled aluminum was commonly used for cooking bags as shown by Wilson.

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ibex [Pat. No. 3,236,196], Guyon et al [Pat. No. 2,244,193], Guillory [Pat. No. 5,431,092], Rice Jr [Pat. No. 4,211,158], and Virag [Pat. No. 4,762,056] teach methods of cooking.

Response to Arguments

18. Applicant's arguments filed 1/18/08 have been fully considered but they are not persuasive.

Applicant argues that obvious double patenting requires prior art evidence. However, MPEP 804 details instances when prior art evidence is not required. In particular, form paragraphs 8.34 and 8.35 describe this situation.

Applicant argues that Roberts et al do not teach a material providing "substantially instantaneous transfer" of heat. However, Roberts et al clearly teach the vessel being made from a thin material which inherently "substantially instantaneously transfers heat" from the cooking oil. Furthermore, it is not clear what types or thicknesses of materials would provide this effect. It is not clear what amount of time would be considered "substantially instantaneously". It is not clear what temperature would be considered an "effective frying temperature".

Conclusion

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/
Primary Examiner, Art Unit 1794